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Tammy Olson

Applicant:	Reinold, et al.)	Examiner: Raj K. Jain
Appl. No.	09/943,870)	Art Unit: 2664
Confirm. No.	2243)	Atty. Docket No. IA00004
Filed:	31 August 2001)	
Title:	Vehicle Active Network with Communication Path Redundancy		

TRANSMITTAL UNDER 37 CFR 41.31

Assistant Commissioner for Patents
Alexandria, Virginia 22313

Sir:

Reinold, et al.

Appl. No. 09/943,870

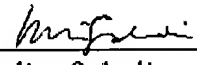
The following is enclosed in response to the Notice of Appeal filed
14 November 2005.

- ☒ Appeal Brief Under 37 CFR 41.37 (16 pages);
- ☒ Fee Calculation Sheet (DUPLICATE).

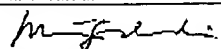
Respectfully submitted,

SEND CORRESPONDENCE TO:

Motorola, Inc.
Intellectual Property Section
Law Department
1303 E. Algonquin Road
Law Department
Schaumburg, IL 60196

By: 
Indira Saladi
Attorney of Record
Reg. No.: 45,759
Telephone: (847) 576-6735
Fax No.: (847) 576-0721
Email: IndiraSaladi@motorola.com

FEB 13 2006

FEE TRANSMITTAL Patent fees are subject to annual revision <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Complete If Known Application Number: 09/943,870 Filing Date: 08/31/01 First Named Inventor: Reinold, Juergen Examiner Name: Raj K. Jain Group Art Unit: 2664 Attorney Docket No.: IA00004																																																																																																																									
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3. APPLICATION SIZE FEE If the specification and drawings exceed 100 sheets of paper, the application size fee is \$250 (\$125 for small entity) For each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s). <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Total Sheets</th> <th>Extra Sheets</th> <th>Number of each additional 50 or fraction thereof</th> <th>Fee (\$)</th> <th>Fee Paid (\$)</th> </tr> </thead> <tbody> <tr> <td>- 100 =</td> <td>/50 =</td> <td>(round up to a whole number)</td> <td>X 250</td> <td>=</td> </tr> </tbody> </table>		Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)	- 100 =	/50 =	(round up to a whole number)	X 250	=	5. OTHER FEE(S) (specify) Non-English Specification, \$130 fee (no small entity discount) <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Fee Paid (\$)</th> </tr> </thead> <tbody> <tr> <td>500</td> </tr> </tbody> </table>		Fee Paid (\$)	500																																																																																																												
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SUBMITTED BY Name (Print/Type): Indira Saladi Signature: 		Registration No.: 45,759 Telephone: 847-576-6735 Date: 13 February 2006																																																																																																																									

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Before the Board of Patent Appeals and Interferences**

Applicant: JUERGEN REINOLD, ET AL.
Serial No.: 09/943,870
Title: Vehicle Active Network with Communication Path Redundancy
Filed: August 31, 2001
Group Art Unit: 2664
Examiner: Raj K. Jain

BRIEF ON BEHALF OF APPELLANTS UNDER 37 CFR 41.37

Pursuant to the Notice of Appeal mailed 16 December 2005 in connection with the above-identified patent application, the applicant respectfully submits the instant Brief on Appeal in accordance with 37 C.F.R. § 41.37.

Indira Saladi
Attorney of Record

Motorola, Inc.
Intellectual Property Section
Law Department
1303 E. Algonquin Rd.
Schaumburg, IL 60196

02/14/2006 FMETEKI1 00000103 502117 09943870

01 FC:1402 500.00 DA

Telephone: 847-576-6735
Facsimile: 847-576-7021

SERIAL NO. 09/943,870

ATTY. DOCKET NO. IA00004

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I. REAL PARTY IN INTEREST

The real party in interest is Motorola, Inc. the assignee of the above-identified patent application. The assignment assigning rights to Motorola, Inc., is recorded in the United States Patent and Trademark Office ("USPTO") at Frame 012537 of Reels 0660-0663.

II. RELATED APPEALS AND INTERFERENCES

There are no related interferences.

The following case was allowed, without comment by the Board, after filing an appeal brief:

Serial number 09/943,921 entitled VEHICLE ACTIVE NETWORK WITH BACKBONE STRUCTURE;

An appeal against the rejection of the each of the following related patent applications has been filed:

Serial number 09/944,892 entitled VEHICLE ACTIVE NETWORK WITH RESERVED PORTIONS;

Serial number 09/943,882 entitled VEHICLE ACTIVE NETWORK WITH FAULT TOLERANT DEVICES; and

Serial number 09/944,893 entitled VEHICLE ACTIVE NETWORK WITH DATA ENCRYPTION.

III. STATUS OF CLAIMS

Currently, Claims 1-20 are pending in the application. The pending claims are presented in Section VIII of this Brief. Claims 1-20 stand rejected and form the subject matter of this appeal. Claims 1-20 stand or fall together. In the final Office Action dated 16 June 2005, the Examiner rejected Claims 1-11, 13-18, and 20 under 35 U.S.C. § 103(a) as

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being unpatentable over the combination of Behar¹ (WO 00/77620), Oliveira (USPN 6,579,208), and Lee (USPN 6,609,127), and rejected Claims 12 and 19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Behfar (WO 00/77620), Oliveira (USPN 6,579,208) and Sundling (WO 01/19038).

IV. STATUS OF AMENDMENTS

There have been no amendments to the claims filed subsequent to the final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Although specification citations are inserted below in accordance with 37 C.F.R. § 41.37, these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the brief. There is no intention to in any way suggest that the terms of the claims are limited to the examples in the specification. Although, as demonstrated by the reference numerals and citations below, the claims are fully supported by the specification as required by law, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology, as is done here to comply with rule 41.37, does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the reference numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

The invention, as defined in Claims 1 and 14, and with reference to FIGS. 1-4 and 10-12, is a vehicle 10 including a first device, e.g., 14, 16, 18, 20, or 136, and a second device,

¹ Applicants point out that the Examiner identifies reference WO 00/7760 as Behfar, but it should be identified as Razavi. Please note that Applicants successfully argued that Razavi does not teach or suggest "an active network" in an appeal brief for U.S. Application No. 09/943,921.

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e.g., 14, 16, 18, 20, or 136 and an active network 30 communicatively coupling the first device, e.g. 136 and the second device, e.g. 16. At least a first communication link 140, 142 or 144 and a second communication link 140, 142 or 144 communicatively couple the first device to the active network 30. The first device, e.g. 136, may include an active network element, e.g. 40, formed integral with the device. A plurality of input/output ports communicatively couple the first device, e.g. 136, via the communication links 140, 142 or 144 to the active network 30. Data streams may be communicated along each of the communication paths 140, 142 and 144 to a destination device coupled to the active network 30.

As depicted in FIG. 11, the first device, e.g. 136, may be a network sub-system 152 and include a plurality of devices 154, 156 or 158. The sub-system 152 incorporates an active network element 166 that is coupled to the active network 30. Still in a further alternative and as shown in FIG. 12, the device 136 may include redundant elements, whether devices, device elements, or active network elements 172 and 174.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1-11, 13-18, and 20 are patentable under 35 U.S.C. § 103(a) over the combination of Behar (WO 00/77620), Oliveira (USPN 6,579,208), and Lee (USPN 6,609,127).

Whether Claims 12 and 19 are patentable under 35 U.S.C. § 103(a) over the combination of Behar (WO 00/77620), Oliveira (USPN 6,579,208) and Sundling (WO 01/19038).

VII. ARGUMENT

a. Whether Claims 1-11, 13-18, and 20 are patentable under 35 U.S.C. § 103(a) over the combination of Behar (WO 00/77620), Oliveira (USPN 6,579,208), and Lee (USPN 6,609,127).

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To establish a *prima facie* case of obviousness, and hence to find Claims 1-11, 13-18, and 20 unpatentable under 35 U.S.C. § 103(a) over the combination of Behfar/Oliveira/Lee, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

In the present case, all three criteria are not met. There is no suggestion or motivation to modify or combine the references. Even if there was a suggestion or motivation to modify or combine the references, there is no expectation of success. Finally, the Behfar/Oliveira/Lee references do not teach or suggest the claim limitation to active network.

In the final Office Action dated 16 June 2005, the Examiner states "Behfar² fails to disclose the coupling of devices through an active network for controlling the flow of data amongst the devices. Oliveira discloses the use of a control area network (CAN) Behfar and Oliveira fail to disclose the use of active networks. Lee discloses coupling of devices ... through the use of control area networks (CAN), which also comprises of active networks such as WANs, LANs, etc. as well as passive networks such as fiberoptic links."

In other words, the Examiner admits that Behfar and Oliveira fail to disclose the use of active networks. However, the Examiner seems to assert that Lee discloses the use of active networks by taking the mention of "WANs, LANs, etc." in Lee (col. 3, lines 29-35) as

² Applicants point out that the Examiner identifies reference WO 00/7760 as Behfar, but it should be identified as Razavi. Please note that Applicants successfully argued that Razavi does not teach or suggest "an active network" in an appeal brief for U.S. Application No. 09/943,921.

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a teaching or suggestion of "active networks" as the Applicants have claimed. Such an assertion is unsupported and the Board should withdraw the rejection.

As noted in the prior responses to the office actions, the term "active network" is known to one of ordinary skill in the art. This is not an arbitrary assumption made by the attorney, but is based upon experts in the field of computing and networking. See Tennenhouse references provided with the Applicants' 10 January 2003 Information Disclosure Statement and Applicants' Response dated 31 March 2005, pg. 6-7. These references and numerous articles, written by third parties, demonstrate that an active network is a term used for recognizing a very particular kind of network. The interpretation of the term "active network" given by those of ordinary skill in the art is clear: an active network is a network including nodes capable of performing custom operations on messages that pass through the nodes; does not require a central server or computing resources; are aware of the contents of the messages transported and can participate in the processing and modification of the message while they travel through the network. *Id.*

With the requirements for patentability in mind, Applicants claim a vehicle comprising an active network, along with other limitations. The Applicants assert that an active network is known to the skilled artisan to include nodes capable of performing custom operations on the messages that pass through the nodes. An active network does not require a central server or computing resources. Active network nodes are aware of the contents of messages transported and can participate in the processing and modification of the messages while they travel through the network. That is, an active network is a defined physical structure that is unlike other communication structures such as a CAN network, communication busses and/or passive networks.

Moreover, the applicants clearly distinguish particular kinds of passive networks, such as bus architectures, in the background portion of the specification. Beginning at page 2, line

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3 of the specification, the applicants explain that, in accordance with existing design philosophy, various communication bus structures for interconnecting control elements, sensors, actuators and like structures within vehicle have been used, but that these architectures suffer a number limitations. The applicants further explain, beginning at page 2, line 1 of the specification, that legacy architectures, including CAN networks, are distinguished from active networks. Further, beginning at page 2, line 19 of the specification, that legacy architectures have been incorporated in connection with bus architectures and these architectures do not provide sufficient reliability for vehicle functional requirements such as power train, suspension, airbag systems, and the like, and usage has been limited to applications wherein information technologies are added to the vehicle. Thus, as the applicants have explained, existing architectures have not met the needs of efficient, reliable integration of in-vehicle electronic technologies and plug-and-play upgradeability.

Clear from the foregoing discussion, the applicants have claimed a specific physical structure, namely an active network known to have particular characteristics, within a vehicle. This active network is not a CAN network, a bus architecture and a passive network. In light of the specification, the broadest reasonable interpretation of the term active network does not mean CAN networks, bus structures and/or passive networks. For the claims to be unpatentable, i.e., not to meet the requirements of 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation contained in the claims, and particularly, in this case, must teach or suggest a vehicle including an active network. Because the prior art fails to teach or suggest this structure or methods employing such structures, claims 1-11, 13-18, and 20 do meet the requirements of 35 U.S.C. § 103(a) and are patentable.

Cited in the Office action as teaching an "active network" is Lee. However, the statements in Lee are clear that an active network is not described. As noted, an active network does not require a central server or computing resources. Lee requires each CAN

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system include "a master controller," which can only be considered a central server or resource for each CAN system. Lee, col. 2, lines 32-50. Further, Lee describes that during routing of data between master controllers, a single master controller is chosen to be an "activated master controller" where the activated master controller controls the flow of communications in the CAN. Lee, col. 9 lines 52 et seq., FIG. 4. Clear from the discussion of how data is communicated within the Lee network (col. 9 lines 52 et seq., FIG. 4), the CAN network in Lee requires the master controller be in control of the flow of data. It is apparent from a careful reading of Lee that it describes nothing more than a CAN network having master controllers, and makes no teaching or suggestions whatsoever of an active network.

The final Office Action suggests that the use of the terms "WANs, LANs, etc." in Lee as an indication that the network described by Lee is an active network. This misconstrues the use of the terms in Lee. The use of the terms is for extending the coupling of the CAN network, e.g. to outside one physical location such as the home and/or business. The fact that the CAN may also have WANs, LANs, etc. couplings does not make the CAN network of Lee into an active network. That is, Lee requires a master controller and the requirement for a master controller, by definition, removes the CAN network from the definition of an active network. In any case, the terms "WANs, LANs, etc." are not used to teach or suggest an active network.

Independent Claims 1 and 14 positively recite an active network, which is a specific physical structure known to have particular characteristics, within a vehicle. This active network is not a CAN network, a bus architecture and is not a passive network or any combination. Lee does not disclose any active network and thus Claims 1 or 14 cannot be taught or suggested by the Behfar/Oliveira/Lee combination.

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Even if Lee taught the use of an active network, which it does not, there is no motivation to combine the CAN network structure taught by Lee into the vehicle structures taught by Behfar and/or Oliveira. In any case, there is no expectation of success to modify or combine the references. A person of ordinary skill in the art would not combine the CAN home and/or business technology with the in-vehicle technology of Behfar and/or Oliveira for many reasons, e.g. a vehicle has physical constraints that are not in a home and/or business.

In view of the foregoing remarks, it is respectfully submitted that each of the rejections of Claims 1-11, 13-18, and 20 are patentable over the prior art, and that all of the pending claims should be allowed. As such, the Board should withdraw the rejections of Claims 1-11, 13-18, and 20.

b. Whether Claims 12 and 19 are patentable under 35 U.S.C. § 103(a) over the combination of Behfar (WO 00/77620), Oliveira (USPN 6,579,208) and Sundling (WO 01/19038).

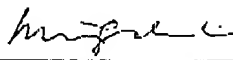
The Examiner has already admitted that both Behfar and Oliveira fail to teach or suggest an active network. Further, Sundling also fails to teach an active network. Did the examiner mean to reject Claims 12 and 19 over the combination of Behfar/Oliveira/Lee further in view of Sundling? If so, such a rejection was not made. In any case, Sundling fails to teach the limitation to an "active network" and such a limitation is required by the claims. Since a claimed limitation is not taught or suggested by the prior art, the rejection is unsupported and the Board should withdraw the rejections of Claims 12 and 19.

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Respectfully submitted,

Reinold, et al.

by: 
Indira Saladi
Attorney for Applicant
Registration No. 45,759
Phone: (847) 576-6735
Fax: (847) 576-0721

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VIII. CLAIMS APPENDIX

1. (original) In a vehicle comprising a first device and a second device, an active network communicatively coupling the first and second data devices, the active network including a plurality of active network elements coupled by connection media, the plurality of active network elements and connection media being configurable to provide a plurality of communication paths between the first device and the second device for a communication between the first device and the second device.

2. (original) The vehicle of claim 1, wherein each of the first and second devices are coupled to at least one of the active network elements.

3. (original) The vehicle of claim 2, wherein at least one of the active elements comprises a switch.

4. (original) The vehicle of claim 2, wherein at least one of the active elements comprises a bridge.

5. (original) The vehicle of claim 2, wherein at least one of the active elements comprises a router.

6. (original) The vehicle of claim 1, wherein the active network comprises a packet data network.

7. (original) The vehicle of claim 1, wherein the active network complies with an Internet protocol standard.

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8. (original) The vehicle of claim 1, comprising an interface coupled to the active network to receive configuration information, the data transport medium being configurable responsive to the configuration information.

9. (original) The vehicle of claim 7, wherein the interface comprises a wireless interface.

10. (original) The vehicle of claim 1, wherein the active network is reconfigurable responsive to detection of a fault within the data transport medium.

11. (original) The vehicle of claim 1, wherein the active network is automatically, periodically reconfigured.

12. (original) The vehicle of claim 1, wherein one of the plurality of active network elements comprises a root node element, and wherein the active network is configured relative to the root node element.

13. (original) The vehicle of claim 1, wherein the active network is configured to include time information.

14. (original) Within a motor vehicle, an active network for communicating data between a first device and a second device within the motor vehicle, the active network comprising:

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a data interface to each of the first device and the second device for coupling the first device and the second device, respectively, to the active network, wherein the data interface operates to accept data from or deliver data to the device, respectively, independently of the functionality of the respective device;

a plurality of active network elements coupled by connection media;
the interfaces being coupled to at least one of the active network elements; and
wherein the active network elements are configurable to define a plurality of communication paths between the first device and the second device for a communication between the first device and the second device.

15. (original) The active network of claim 14, wherein the active network comprises a packet data network.

16. (original) The active network of claim 14, wherein the active elements are selected from the group of active elements comprising: a switch, a bridge and a router.

17. (original) The active network of claim 14, wherein the active network elements are reconfigurable responsive to detection of a fault within the data transport medium.

18. (original) The active network of claim 14, wherein the active network elements are automatically, periodically reconfigured.

19. (original) The vehicle of claim 14, wherein one of the plurality of active network elements comprises a root node element, and wherein the active network is configured relative to the root node element.

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20. (original) The vehicle of claim 14, wherein the active network is configured to include time information.

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IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, entered by the examiner and relied upon by the appellant in the appeal, or relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

X. RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court of the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 C.F.R. § 41.37.